IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 16577 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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DAHYABHAI KANJIBHAI MISTRY - Petitioner(s)

Versus

STATE OF GUAJRAT & 1 - Respondent(s)

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Appearance :

MS JIRGA D JHAVERI for Petitioner No(s).: 1.

Mr. H.D. Dave, AGP for respondent No.1.

DS AFF.NOT FILED (N) for Respondent No(s).: 1,2.

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 17/08/2005

ORAL JUDGMENT

In this petition under Article 226 of the Constitution of India, the petitioner has prayed for an appropriate writ, order or direction directing the Collector, Surendranagar to recover the amount of

gratuity amount with 10% interest as per the order of the Controlling Authority and/or the Recovery Certificate dated 29.10.2004 from the respondent No.1 Municipality.

2. In response to the notice issued by this Court, Shri Hasit D. Dave, learned AGP appears on behalf of respondent No.1 Collector and Shri D.A. Surani, learned advocate appears on behalf of respondent No.2. According to Shri H.D. Dave, ld. AGP and Shri Surani, ld. Advocate the entire amount as per the Recovery Certificate is paid, but the same is disputed by Ms. Jirga Jhaveri, learned advocate appearing on behalf of the petitioner. Accordign to her, still some amount is due and payable despite the order passed by the Controlling Authority as well as the Recovery Certificate. This is a disputed question of fact which cannot be decided by this Court. However, it will be open for the petitoner to move an appropriate application/representation before the respondent No.1 and they may consider the same in accordance with law considering the order passed by the Controlling Authority and the Recovery Certificate as early as possible preferably within one month from the date of receipt of this order. If ultimately it is found by the respondent No.1 Collector that still some amount is due and payable by the respondent No.2 pursuant to the order passed by the Controlling Authority and/or the Recovery Certificate, then suitable direction be issued to the

respondent No.2 to make payment of the same immediately.

3. With these observations and directions, the present Special Civil Application is disposed of. Direct service is permitted.

[M.R. Shah, J.]

RMR.

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